REMARKS

Applicants have studied the Office Action mailed April 5, 2005 and have made amendments to the specification and claims. It is respectfully submitted that the application, as amended, is in condition for allowance. Reconsideration and allowance of the pending claims in view of the above amendments and following remarks is respectfully requested.

Priority:

The Examiner noted that an application in which benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification or in an application data sheet, as well as the relationship between the applications.

Applicants have complied with the requirements for obtaining benefit of earlier application(s) by virtue of having referenced the prior application(s) in the application data sheet of the present application. However, Applicants are also hereby amending the specification of the present application to insert the benefit claim as the first sentence of the specification.

Rejection of claims 25-26 and 30-37 under 35 USC §102(b) and §102(e):

The Examiner rejected claims 25-26 and 30-37 under 35 USC §102(b) as being anticipated by Nayler et al. (Biochem. J. 326, 693-700, 1997), who teach an isolated DNA encoding a product having at least 93.8% identity to SEQ ID NO:2 of the present invention. The Examiner states that, since said percentage identity is very close to 95%, it is believed that by changing the analysis parameters for sequence alignment, Nayler's sequence can be displayed to encode a polypeptide having 95% identity to SEQ ID NO:2 of the present invention and hence is capable of anticipating claims 25-26.

The Examiner also rejected claims 25-26 and 30-37 under 35 USC §102(e) as being anticipated by Ullrich (US20020106771, Aug. 8, 2002), who teaches an isolated DNA encoding a product having at least 93.8% identity to SEQ ID NO:2 of the present invention. The Examiner states that, since said percentage identity is very close to 95%, it

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is believed that by changing the analysis parameters for sequence alignment, Nayler's sequence can be displayed to encode a polypeptide having 95% identity to SEQ ID NO:2 of the present invention and hence is capable of anticipating claims 25-26.

Applicants respectfully assert that neither Nayler et al. nor Ullrich anticipate claims 25-26 and 30-37 since each discloses polypeptide sequences having less than 95% sequence identity to SEQ ID NO:2. However, in the interest of advancing prosecution of the present application, claims 25-26 and 36 are hereby amended, as indicated above by the amendments to the claims.

Double Patenting:

The Examiner rejected claims 24-37 under the judicially created doctrine of double patenting over claims 1-9 of U.S. Patent No. 6,455,291. The Examiner stated that the subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter.

Applicants hereby submit a terminal disclaimer (along with the terminal disclaimer fee), thereby obviating this double patenting rejection.

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Conclusions

By way of the above amendments, claims 25-26 and 36 have been amended. Claims 24-37 remain pending.

A terminal disclaimer is submitted herewith to obviate the double patenting rejection.

In view of the above amendments and remarks, and the terminal disclaimer submitted herewith, Applicants respectfully submit that the application and claims are in condition for allowance, and request that the Examiner reconsider and withdraw the rejections. If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is invited to call the undersigned agent at (240) 453-3812 should the Examiner believe a telephone interview would advance prosecution of the application.

Respectfully submitted,

CELERA GENOMICS

Date: July 5, 2005

By: _____
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Attachment:
  - Terminal Disclaimer

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